

APPEAL NO. 93359

On March 26, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that the claimant, CO, who is the appellant, had not sustained a compensable mental trauma injury on (date of injury), in the course and scope of his employment with the (employer), which is a self-insured governmental subdivision.

The claimant appeals and asks for another hearing. The carrier/employer responds that the hearing officer's decision is correct.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

The claimant worked as a field supervisor for the (employer). He testified to job stress over a period of approximately five years. Claimant said that this stress resulted from the need for better equipment, insubordination of his employees, and overbearing supervisors. Claimant testified that he was transferred to a new facility in December 1991 or January 1992, and he believed that this transfer would solve some of his problems. However, he stated that job stress continued. Claimant testified that in February 1992, he asked his supervisor, Mr. B, to meet with his employees concerning bad behavior on the job. The morning of February 11th, he stated that he asked about the meeting and Mr. B asked him to get his crews out. Claimant stated that he later found out that Mr. B met with his employees and did not discuss the specific concerns that claimant had.

The claimant acknowledged that Mr. B had the right to meet with his employees, but expressed his opinion that he should have been included in the meeting. Claimant stated that it was after this time that he began to experience trembling, excessive smoking, and increased stress. Medical records indicate that the claimant voluntarily admitted himself to Gulf Pines Hospital on February 15, 1992. The hospital diagnosed claimant's condition as major depressive disorder, obsessive compulsive disorder, and alcohol dependence. Claimant strongly denied that he was alcohol dependent and indicated that he had been subjected to undue pressure at the hospital to participate in alcohol dependence counselling.

The claimant has asked for review of the decision, expressing preference to speak. The Appeals Panel reviews the record of the case at the hearing, and hears no oral argument. Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. Art. 8308-6.42 (Vernon Supp. 1993) (1989 Act). Although the claimant did not point out where he believed the hearing officer was in error, we will interpret his appeal as a challenge to the decision on the basis that there was insufficient evidence to support the decision.

The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. Article 8308-6.34(e), 1989

Act. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Texas Employers' Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ).

The statute concerning mental trauma injuries found in Article 8308-4.02 states:

- (a) It is the expressed intent of the legislature that nothing in this Act shall be construed to limit or expand recovery in cases of mental trauma injuries.
- (b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination is not a compensable injury for purposes of this Act.

In workers' compensation law, there has been no compensation paid for repetitious mental trauma injuries. Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979). Consequently, the hearing officer was correct in not finding the carrier liable for repetitious trauma. In addition to this, the second section of the statute indicates that a specific event which arguably triggers mental trauma will not lead to a compensable injury if it is a legitimate personnel action. Article 8308-4.02(b). We agree with the hearing officer's determination that a meeting between employees and the main supervisor was a legitimate personnel action.

There is sufficient evidence to support the hearing officer's decision that no injury occurred, and it is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Joe Sebesta
Appeals Judge